Indiana Department of Education

Division of Special Education

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1799.01

COMPLAINT INVESTIGATOR:

DATE OF COMPLAINT:

DATE OF REPORT:

Jane Taylor-Holmes
September 12, 2001
October 19, 2001

REQUEST FOR RECONSIDERATION: no

DATE OF CLOSURE: November 16, 2001

COMPLAINT ISSUES:

Whether the Valparaiso Community Schools and the Porter County Education Interlocal violated:

511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's *individualized education program* (the "*IEP*") as written, specifically: failing to implement the annual goals and short-term objectives; and failing to implement the behavioral intervention plan (the "BIP").

511 IAC 7-27-7(b) with regard to the school's alleged failure to ensure the student's teacher of record monitored the implementation of the student's *IEP* with respect to the student's annual goals and short-term objectives.

511 IAC 7-25-6 with regard to the school's alleged failure to conduct a reevaluation of the student at least every thirty-six months.

511 IAC 7-27-6(a)(10) and 511 IAC 7-27-9-(a)(4) with regard to the school's alleged failure to ensure the case conference committee (the "CCC") determined the student's placement in the least restrictive environment ("LRE") based on the student's *IEP*.

FINDINGS OF FACT:

The student (the "Student") is sixteen years old and a junior at the School. The Student is eligible for special education and related services as a student with an emotional handicap ("EH"). The Student is currently attending only half days at the School.

The Student's annual case review (the "ACR") was conducted on January 17, 2001, and the Student's *IEP* was revised. The initiation and duration of services dates for the revised *IEP* are January 17, 2001, to January 17, 2002. At the time of the ACR the Student's instructional day was comprised of attending the School part-time and an alternative program outside of the School ("Stages") part-time. Page 22 of the *IEP* contains the continuum of services options. Option six (special education instruction for the entire instructional day in a general education setting) has the word "entire" struck with a "0.5" replacing it, and "yes" circled. Option seven (special education instruction for the entire instructional day in a separate education facility) has the word "entire" struck with a "0.5" replacing it, and "Yes" circled. The following statements were written next to Options six and seven. "The following program is the appropriate environment to facilitate transition to the least restrictive environment at this time. [Student's] needs are met w/this program." The Complainant gave written

- consent for the *IEP* to be implemented.
- The Student had been in the Stages program for the entire instructional day until a September 18, 2000, CCC meeting. Narrative found on page two of the January 17, 2001, CCC Report states "[Student], now a tenth grader, has had his education in this facility until the fall of 2000, when his IEP was revised to include two self-contained special education classes at the local high school (the "School").
- Page 21 of the January 17, 2001, *IEP* states that the Student is to receive English, social studies, and affective education in a separate educational facility for half of the instructional day. Pre-algebra, biology, and interpersonal relationships are to be provided to the Student at the School.
- Although the January 17, 2001, CCC determined that the Student continued to be eligible for special education services, it was determined that no evaluation data was required. Page eight of the CCC Report states "The committee does not feel assessment at this time is needed to develop an appropriate program for [the Student]. The reevaluation due date is not indicated in the CCC Report. The Complainant did not sign in "agreement" or "disagreement" regarding the determination for a reevaluation. The Complainant did sign in agreement to the placement recommendation for the Student.
- Two pages of a Behavior Intervention Plan (the "BIP") form are included in the *IEP* as pages 13 and 14; however, the pages have not been completed. With reference to the Complainant's participation in the BIP, page 14 states the following: "Supported suspension by having [Student] do school work at home. Provided transportation to Sat. class." Also found on page 14 is the following statement: "Parent does not agree w/therapeutic holds, however, the environment will be protected."
- The Student's annual goals and benchmarks are on pages 17 and 18 of the *IEP*. The evaluation procedures of the goals and benchmarks are listed as teacher observation, parent report, and data collection. Progress is to be reported through the Complainant's receipt of monthly copies of the monitored goal and objectives pages. Page 21 of the *IEP* states "Monthly progress reports on grades will be provided to [Student] who will give them to his mother."
- A CCC meeting was conducted on May 19, 1998. The *CCC Report* includes the following statement. "A non-routine reevaluation was requested by [Student's] mother to assess the possibility of an other health impairment." The report states "The reevaluation due in March of 1999 was also discussed as to whether a re-eval would be done, whether a partial evaluation (specific evaluation components would be identified) would be done or whether a full evaluation as listed in Article 7 under [Student's] area of eligibility would be done." The report states that the "at this time [Complainant] prefers a full standard re-evaluation." The report also states "Parent consent for this *IEP* will be considered consent for the reeval." The *CCC Report* indicates the Student's reevaluation date as March 21, 1999.
- The CCC met on June 1, 1999, for the Student's ACR. The Complainant wrote the following in the reevaluation/additional assessment consideration section on page 17 of the *IEP*. "I do not feel that at this time [Student] would benefit by being subjected to additional testing." The Student's reevaluation date listed on the *IEP* is May 14, 2001. The Complainant's signature can be found at the bottom of the page with "agree" checked regarding the decision not to reevaluate the Student.
- The CCC met on November 19, 1999. The amendment note of the *CCC Report* states "All other components of the established *IEP* remain in effect as previously approved on 6-1-99." The June 1, 1999, *IEP* lists May 14, 2001, as the Student's reevaluation date; however, the reevaluation date on

- this CCC Report is listed as March 21, 2002.
- The CCC met on May 10, 2000. The following was written in the reevaluation/additional assessment consideration section of the *IEP*. "While [Complainant] would like other health impairment to be considered, the committee reviewed this material from previous evaluation and determined no assessment is necessary." The Student's reevaluation date listed on the *IEP* is March 21, 2002. The Complainant did not sign in "agreement" or "disagreement" to this recommendation.
- In a letter dated August 22, 2001, the Complainant informed the School's special education teacher that the Student would be attending the School in the morning, and would not be attending the Stages program in the afternoon. The Complainant specifically wrote "[Student] will attend [the School] with the partial schedule that exists. [Student] will not be attending class at the [Stages]."
- The CCC met on September 18, 2000. The following was written in the reevaluation/additional assessment consideration section of the report. "While [Student] and [Complainant] are interested in how he is doing they don't want testing to interfere w/his schedule." The Student's reevaluation date listed on the *IEP* is March 21, 2002. The Complainant signed in agreement to this reevaluation recommendation.
- The CCC met on January 17, 2001, for the Student's ACR. The following was written in the reevaluation/additional assessment consideration section of the *IEP*. "The committee does not feel assessment at this time is needed to develop an appropriate program for [Student]." There was no reevaluation date listed on the *IEP*. The Complainant did not sign in "agreement" or "disagreement" to this recommendation.
- The CCC met on May 14, 2001, and concluded on May 24, 2001. The amendment note on the CCC Report states "All other components of the established IEP remain in effect as previously approved on 1/17/01." No reevaluation date is listed on this report. The following statement is found on page 16 C of D of 17. "On this date, [Complainant] stated that she and [Student] might feel that some testing is needed. [Complainant] did not elaborate on that point, however."
- The 2001-02 instructional year began on August 22, 2001. The Complainant's letter of complaint is dated September 10, 2001, and was received by the Division on September 11, 2001.
- The CCC met on September 5, 2001. The amendment note of the *CCC Report* states "All other components of the established *IEP* remain in effect as previously approved on 1-17-01." The CCC determined that the Student should be reevaluated for OHI, and the following was written in the reevaluation/additional assessment consideration section of the report found on page seven. "Child be classified as OHI and placed in the least restrictive environment." Page seven of the report also indicates that the reevaluation is to be completed by October 18, 2001. The top of this page lists the Student's reevaluation date as March 21, 2002.

CONCLUSIONS:

Findings of Fact #2, #3, #4, and #5 indicate that the Student's instructional day was to be comprised of half-day at the School and half-day at the Stages program. This was agreed upon at the January 17, 2001, CCC meeting, and the Complainant gave written consent for the *IEP* to be implemented. However, Findings of Fact #1 and #12 indicate that the Complainant unilaterally changed the Student's placement by shortening the instructional day to only a half-day of instruction at the School. As a result of this unilateral change of placement the School has not had the opportunity to fully implement the Student's *IEP* as written. No violation of 511 IAC 7-27-7(a) has occurred with

regard to implementing the Student's annual goals and short-term objectives.

Findings of Fact #1 and #12 indicate that the Complainant unilaterally changed the length of the Student's instructional day; and, subsequently the School did not have an opportunity to implement the Student's *IEP*. Further, Finding of Fact #6 indicates that the Student's BIP was not completed; and therefore, the opportunity for the School to attempt to implement the BIP did not present itself. No violation of 511 IAC 7-27-7(a) occurred with regard to implementing the Student's BIP.

Finding of Fact #7 indicates that the monthly progress reports on the Student's grades were to be provided to the Student, who was to then present them to the Complainant. Findings of Fact #1 and #12 indicate that the Complainant unilaterally changed the length of the Student's instructional day, resulting in a unilateral change of placement, and therefore; the School has not had the opportunity to implement the *IEP* as written. Further, Finding of Fact #16 indicates that the Division received the Complainant's letter of complaint on the 13th day of the 2001-02 instructional year, and the teacher of record could not have completed her monitoring activities since a monthly progress report was not yet due. No violation of 511 IAC 7-27-7(b) occurred.

Finding of Fact #8 indicates that the Student was to be reevaluated in March 1999, and the Complainant gave written consent for such. Finding of Fact #9 indicates that when the CCC met in June 1999, the Complainant did not want the Student to be reevaluated; however, the reevaluation due date had passed. Findings of Fact #10, #11, #13, #14, and #15 indicate that the Student's *CCC Reports* listed two different dates (May 14, 2001 and March 21, 2002) for the 36-month reevaluation; although no reevaluations were conducted. Finding of Fact #17 indicates that the Student's most reevaluation was conducted in October 2001. A violation of 511 IAC 7-25-6 occurred.

Finding of Fact #2 indicates that the CCC did consider the various options when determining the Student's placement in the least restrictive environment. No violation of 511 IAC 7-27-6(a)(10) and 511 IAC 7-27-9(a)(4) occurred.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Valparaiso Community Schools and the Porter County Education Interlocal shall:

1. review with all professional school corporation personnel the requirement that student 36-month reevaluations shall occur accordingly, unless otherwise determined by the CCC. A copy of the review notice shall be submitted to the Division, along with a signature list of all personnel, by name and title, acknowledging receipt of the review notice, no later than November 16, 2001.

DATE REPORT COMPLETED: October 19, 2001